

# OCCUPATION OF THE RUHR

*By*  
BERTHOLD SINGER, LL. D.

## **THE RUHR**

The torrent of literature that has swept the earth as a result of the war must also be considered one of the atrocities which followed in the wake of the catastrophe. Large and small books describing the actual fighting in its various aspects, volumes upon volumes attempting to place the responsibility for the dreadful turn of affairs definitely on one side or the other, or on both, heavy tomes and slender pamphlets advising the statesmen of all nations what should have been done after the war, or what should not have been done and why not, have appeared with unbelievable speed and are increasing with bitter futility. It may be confessed that they are disappearing at the same speed at which they are appearing, each being overreached at the time of its publication by a successor quite able to prove exactly the contrary of what the predecessor has conclusively shown.

Even this situation, the desire of the people to express their opinion in writing about a matter that affects all of us, has nothing marvelous in it. Since the art of printing books has been invented no political event has become of such economical importance affecting the entire civilized world as The Great War. Other wars have lasted longer, were fought over larger territory, the principles at stake may in fact have been more ideal than the actual principles about which the last war was fought. The economical consequences, however, were almost limited in former wars to the actual participants in the war and to a much slighter degree did they extend to the neutrals, and particularly to the neutrals of remote countries. It is different at the present time and it has become particularly different since the war ceased. The economical revolution initiated by the peace throws not only its shadow but its actual devastating weight over all quarters of the globe, from Siberia to Spain, from Argentina to Italy. Even though the people may have become convinced that war, and especially this war, has been a most dreadful happening, they have become more convinced that the peace and the events which followed the peace seem to be more dreadful.

One of the most consequential important episodes of this peace is undoubtedly that step which in a general way has been termed "The Occupation of the Ruhr." The daily press continues to bring reports almost to the same extent, to the same full length, and about in the same tone, in which these daily reports came in between July, 1914, and November, 1918. Occupations, executions, oppressions, and whatever the terms may be to which we have become accustomed in the war news, we encounter them once more in those reports which deal with this "peaceful occupation."

In the following few lines, which were written far away from the seat of the trouble, I endeavored to view the events not so very much from the point of vantage which the historian will later occupy, or which the reporter and press correspondent takes now. It is more the legal side of the question which attracted me, if the event can be said to have any legal aspect at all, that gave the impetus to the present pamphlet. The lines were not written by me in my capacity as consul of various American republics at Chicago, but as a private citizen and as a man who reads international law to pupils in schools which prepare their young men for the legal profession.

It seemed to me that the relation of the various signatory powers to the Treaty of Versailles aside from the relation of France and Germany to this Treaty, has not

been brought out as clearly as it might have been in the numerous publications which deal with the subject of the occupation of the Ruhr. The Treaty after all is a document the responsibility for which must be shared by quite a number of administrations or governments. If, therefore, two of the signatories to this pact or even one of them only, places on the document an interpretation with far reaching consequence different from that which is placed on it by the other powers that have signed the Treaty, it seems to me necessary to throw the light on this particular relation of these other parties to the Treaty.

In addition to this agreement which after all, however, only dates from January, 1920, there are other principles which have been recognized long before the tremendous war broke out and which will be recognized long after the last man who took part in the war or in the peace movement is buried. These are the everlasting principles on which the international law is based. It is for this reason that in the following few lines the question of the Treaty of Versailles specifically and the question of international law generically, has been discussed.

It is particularly under the last mentioned discussion of general international legal principles that the steps taken by the occupying forces have been viewed, and naturally also those steps which then were made by the authorities and citizens in the occupied territory. The condition that in times of peace citizens of one nation should be compelled to disobey their own administration and to be punished for disobeying the ordinances of a foreign nation, presents an anomaly which rarely has been encountered in history.

If, in connection with these legal deductions, sidelights have been thrown on the economical situation, and particularly on the actual economical aims of the occupying power, this has been done only because the entire situation cannot be viewed from any point of view without at the same time at least referring to the economical side.

After all this has been stated, after the national and international law, the interpretation of a document and the economical part have been analyzed as superficial as this in the narrow volume of these few pages can be done, it would only remain to find out if there is a moral aspect to this question. In my opinion this moral aspect has unfortunately been disregarded. Much more moral warmth and even heat is noticeable in the daily press reports describing mob actions against a single member of a minority race or creed; but our eyesight seems to be blurred in connection with the wholesale oppression and violations perpetrated at the present in Europe where a return to actual peaceful conditions is more essential than anything else. There is a moral side to this question and this possibly should be taken up by the various administrations or leaders of nations to terminate a condition which must absolutely lead to a reopening of hostilities and to another conflagration which will devastate that which was left after almost five years of terrible war.

## FRENCH DIPLOMACY

The world will recall when President Wilson threatened at the Paris Conference to break up the entire meetings by returning to the United States unless France immediately withdrew her plan for the annexation of the Ruhr District. What Wilson threatened to do, Bonar Law, the Prime Minister of Great Britain, has carried through. On January 2, 1923, he made the following address at the Paris Conference:

"His Majesty's government after a profound examination of the French proposals believes that if those proposals are executed not only will they fail to achieve the results expected but they will probably bring grave and even disastrous consequences for the economic situation in Europe.

"In these conditions the British government cannot associate itself with the propositions nor accept responsibility for them.

"Nevertheless, his majesty's government assures the French government that while regretting the existence of the deep divergence of opinion which is irreconcilable on such a serious subject, friendly sentiments are held by the British government, and so far as we know by the British people, towards the government of France."

Mr. Poincare replied to Mr. Bonar Law in the conference as follows:

"The government of the republic has examined the British proposals, but the more they have studied them the more they recognized that they provided a considerable reduction in the reparations due France and that they overthrow the Versailles treaty. Therefore, it is impossible for us to accept these proposals as solutions.

"The French government regrets that it has not been able to reach an accord on these grave questions, but we thank the British government for the friendly declarations and give it assurances that despite the differences in views the sentiments of the French government and nation towards Great Britain will remain steadily cordial."

Poincare took his last step, seeing his dream on the Rhine,—that dream which former Prime Minister Lloyd George and President Wilson thwarted in the conference,—now fully realized. He does not want any reparation payments. Reparation payments are side issues now. France desires a buffer state on the Rhineland. Bonar Law, the British Prime Minister, gave a full account to the Parliament regarding the French occupation of the Ruhr Basin. He made the statement that the French, in seizing the Ruhr, had cut the jugular vein of the German nation. The French have been afraid to permit Germany to become again an export nation strong enough to pay. Curzon, the British Foreign Minister, is afraid that the economic movement undertaken by the French in the Ruhr District, may develop,—and is developing now,—into a political movement that will bring disaster to Europe. And the occupation of the Ruhr District will compel the United States, although she has a dislike of intervention in European affairs, to become an arbitrator to some kind of a settlement. France's main thought and belief is that Germany must bleed white economically in order that she may never become dangerous to France. France now possesses the Ruhr with its tremendous coal deposits; she makes Germany beg for coal for her industries, and the entire Europe must pay France for coal of which she has practically the sole monopoly now in Europe.

A very interesting essay appeared a short time ago on the European situation written by the great Italian historian Ferrero. He pictures the European situation in a very few words as follows:

"From month to month the condition of Europe continues to grow worse. The effects of a monstrous war and an unhappy peace make themselves felt with increasing force. Confusion multiplies. Nations are wrangling with each other and are crushed under the burden of their debts. Distrust spreads apace. Capital is being wasted or concealed. Governments are losing what little authority they still possess and are headed toward bankruptcy. Misery, unemployment, and the sullen discontent of the populace are growing. We are not even assured that famine, that ancient scourge of humanity, long exiled to the remote places of the orient, may not lift its head again in central and southern Europe."

A dark picture, but actuality. Out of such a condition, says Ferrero, a new order will some day be born, but at the present stage we have not reached "the point at which we can even discuss measures and methods for converting chaos into order."

We all know that owing to the rearrangement of Europe we have before us a great task, and that is to rectify a treaty that is unenforcible. We cannot settle a condition as long as Germany, Hungary and Russia are kept in chains. The only terms we can offer to the world are: "Throw the Treaty of Versailles, the Treaty of Trianon, and the Treaty of St. Germain to the seven winds and give Europe a treaty which will give it peace."

It may be well to throw a light on Premier Poincare's action, as under his presidency the Treaty of Versailles was concluded. It is a great error to believe that France went to war because Germany declared war. The Yellow Book, issued after the declaration of the war, Document No. 5, gives us a confidential report made to the Minister of Foreign Affairs and relates proudly the French militaristic ideas:

**"Our country, conquered in 1870, has never ceased to carry on war, to float her flag and maintain the prestige of her arms in Asia and Africa and to conquer vast territories; Germany on the other hand has lived on her reputation."**

The great historical writer, Ernest Renauld, discussing the war question with President Poincare, made the following remark: "The Entente wanted the war as much as William II, and you, Mr. President, and your group of friends wanted it more than all."

But the best situation about the preparation of the war, of a French army, and Germany's alarming state, was expressed by Lloyd George five months before the war:

**"The German Army is vital not merely to the existence of the German Empire but to the very life and independence of the nation itself, surrounded as Germany is by other nations each of which possesses arms about as powerful as her own. We forget that, while we insist upon a sixty per cent. superiority (so far as our naval strength is concerned) over Germany being essential to guaranteeing the integrity of our own shores, Germany herself has nothing like that superiority over France alone, and she has, of course, in addition, to reckon with Russia on her Eastern frontier. Germany has nothing which approximates to a two-power standard. She has therefore become alarmed by recent events, and is spending huge sums of money on the expansion of her military resources."**

The Treaty of Versailles binds Germany and France. By the invasion, France has resumed warfare. France wants war, not peace. She desires to force Germany to repudiate the Treaty of Versailles so that France may carry through Poincare's designs which are laid down in a secret treaty agreement of 1916-17 between France and Russia. I only quote here a part of the most important correspondence between the Russian Minister of Foreign Affairs to the Russian Ambassador at Paris, naturally to be transmitted to the French Government, and also a letter dated February 1 (14), 1917, by the Russian Foreign Minister to the French Ambassador at Petrograd.

The Russian Minister of Foreign Affairs (M. Sazonoff) to the Russian Ambassador at Paris. February 24 (March 9), 1916:

"(No. 948)

"Petrograd.

"Please refer to my telegram No. 6063 of 1915. At the forthcoming Conference you may be guided by the following general principles:

**"The political agreements concluded between the Allies during the war must**

remain intact, and are not subject to revision. They include the agreement with France and England on Constantinople, the Straits, Syria, and Asia Minor, and also the London Treaty with Italy. All suggestions for the future delimitation of Central Europe are at present premature, but in general one must bear in mind that we are prepared to allow France and England complete freedom in drawing up the Western frontiers of Germany, in the expectation that the allies on their part would allow us equal freedom in drawing up our frontiers with Germany and Austria.

"It is particularly necessary to insist on the exclusion of the Polish question from the subject of international discussion and on the elimination of all attempts to place the future of Poland under the guarantee and the control of the Powers.

"With regard to the Scandinavian States, it is necessary to endeavor to keep back Sweden from any action hostile to us, and at the same time to examine betimes measures for attracting Norway on our side in case it should prove impossible to prevent a war with Sweden.

"Roumania has already been offered all the political advantages which could induce her to take up arms, and therefore it would be perfectly futile to search for new baits in this respect.

"The question of pushing out the Germans from the Chinese market is of very great importance, but its solution is impossible without the participation of Japan. It is preferable to examine it at the Economic Conference, where the representatives of Japan will be present. This does not exclude the desirability of a preliminary exchange of views on the subject between Russia and England by diplomatic means.

"(Signed) SAZONOFF."

On February 1 (14), 1917, the Russian Foreign Minister addressed the following note to the French Ambassador at Petrograd:

"In your note of today's date your Excellency was good enough to inform the Imperial Government that the Government of the Republic was contemplating the inclusion in the terms of peace to be offered to Germany the following demands and guarantees of a territorial nature:

"1. Alsace-Lorraine to be restored to France.

"2. The frontiers are to be extended at least up to the limits of the former principality of Lorraine, and are to be drawn up at the discretion of the French Government so as to provide for the strategical needs and for the inclusion in French territory of the entire iron district of Lorraine and of the entire coal district of the Saar Valley.

"3. The rest of the territories situated on the left bank of the Rhine which now form part of the German Empire are to be entirely separated from Germany and freed from all political and economic dependence upon her.

"4. The territories of the left bank of the Rhine outside French territory are to be constituted an autonomous and neutral State, and are to be occupied by French troops until such time as the enemy States have completely satisfied all the conditions and guarantees indicated in the Treaty of Peace.

"Your Excellency stated that the Government of the Republic would be happy to be able to rely upon the support of the Imperial Government for the carrying out of its plans. By order of His Imperial Majesty, my most august master, I have the honor, in the name of the Russian Government, to inform your Excellency by the present Note that the Government of the Republic may rely upon the support of the Imperial Government for the carrying out of its plans as set out above."

We have before us an address by Mr. Balfour of December 19, 1917, in the House of Commons, when he stated about the French-Russian plan as follows:

"We have never expressed our approval of it, nor do I believe it presents the policy of successive French Governments who have held office during the war. Never did we desire, and never did we encourage the idea, that a bit of Germany should be cut off from the parent State and erected into some kind of . . . independent Government on the left bank of the Rhine. His Majesty's Government were never aware that was seriously entertained by any French statesman."

From the secret treaty and also from the above correspondence between the Russian diplomatic and the French diplomatic offices, we have the facts before us that a secret agreement existed between France and Russia which gave France not only territory to the west of the bank of the Rhine, the Saar region included, but also territory on the east bank of the Rhine. Clemenceau invented for that purpose the Reparation Commission and an unenforceable treaty so as to occupy the east bank of the Rhine and dismember the German Empire forever.

### ECONOMIC SITUATION

A great number of French industrials had been communicating with German business men with the object of establishing a large metal trust as well as a coal trust under the French leadership in Central Europe. Mr. Eugene Schneider, the French steel magnate, was the leading spirit of the movement. He is now the dominating business power in Austria, Jugo-Slavia, Czecho-Slovakia, Italy, Luxemburg and the Saar; and he, at the head of the French industrials, is now seeking to subdue the German syndicates and desires to combine the industries of the Ruhr District with that of France; he desires to establish a trust which should surpass in magnitude the combined steel industries of England and the United States.

With control of the Lorraine iron fields, possession of the Ruhr coal mines is vital to the economic life of France, according to a bulletin on the iron and associated industries of Lorraine, the Saar, Luxemburg, and Belgium written by Alfred H. Brooks and Morris F. LaCroix for the department of the interior.

"The facts as assembled in the bulletin are as follows:

"Since the restoration of Lorraine France now controls 48 per cent of Europe's iron ore reserves, which gave it practical dominance of the European iron and steel industry but for one thing. It lacks a sufficient supply of coal suitable for coking purposes which is essential in the steel industry.

"Control of the Lorraine iron fields is of interest to Americans, because if the possessor acquires sufficient coking coal reserves to develop the iron fields to their fullest extent, it will be America's greatest competitor in the steel and iron market of the world.

"Of all the European coal fields, the Ruhr has by far the greatest reserves suitable for coking purposes. Furthermore, transportation between it and the Lorraine district is comparatively easy and cheap, and the mining is not expensive.

"To develop the two districts to the greatest advantage they must be worked in conjunction. And here was the source of potential trouble. For with Germany in control of the coal district, it could checkmate the efforts of the French steel-makers and prevent them from becoming masters of the iron and steel industry of Europe.

"The French are now in the Ruhr, having claimed that the Germans failed to make full deliveries in reparations in coal as provided in the treaty of Versailles.

Should they succeed in securing sufficient coal to meet the needs of their steel plants, their position in the world markets is assured.

"The situation before the world war was this. The Lorraine fields, which roughly cover a territory sixty kilometers from north to south and average from ten to thirty kilometers in width, were divided among France, Germany, Belgium, and Luxemburg. The fields began at a point somewhat south of Metz and extended northward through France and Germany, through the southern tip of Luxemburg, and ended in Belgium. Of 109,030,000 tons of iron ore consumed by Europe in 1913, 48,093,000 tons came from Lorraine. Germany's portion was second in production, but now it has lost this territory.

"France in 1913 consumed 13,262,000 tons of iron ore, of which it obtained 12,511,000 tons, or 95 per cent, from the Lorraine fields. Germany in the same year obtained 63 per cent of its iron ore from the district, including the French portion.

"Germany was becoming yearly more and more dependent on these fields, as its supply elsewhere was gradually being curtailed. The reserves of the finer grades of ores were being diminished in Spain, and Sweden was putting into effect restrictions to conserve its own supply. Germany as a result was making heavy purchases of iron ore land on the French side of the line. The estimated reserves of these fields are 5,000,000,000 tons, sufficient, it is believed, to last well over a century before exhaustion. Now Germany controls but 7 per cent. of Europe's reserves.

"Before the war there were little or no restrictions on the free passage of coal and iron ore among the four nations in control of the fields. Consequently great industries were built up at the most convenient points. Giant plants were located in Lorraine and the Ruhr, but of course the greater proportion was in the latter district.

"Coal from the Ruhr could be brought cheaply to Lorraine and iron ore could be carried cheaply to the Ruhr. The location of Lorraine along the Moselle and Meuse drainage basins was favorable because of the excellent transportation facilities to these two tributaries of the Rhine. Rail grades were easy to the Ruhr district and the commerce went on unhampered. Germans owned shares in French works in Lorraine, and vice versa.

"In the Ruhr district in 1913 were located 103 of Germany's 228 blast furnaces which produced 8,220,000 tons of the German pig iron output of 17,760,000 tons. In the same year 91 of the nation's 159 steel plants were located in the Ruhr and they produced 10,112,000 tons of the total output of 17,617,000 tons of steel.

"In 1913 there were in French Lorraine 25 iron and steel plants and about 72 blast furnaces. The magnitude of the Lorraine iron ore mining industry may be seen by the fact that in 1913 the total value of the Lorraine iron ore fields, with the metallurgical plants in France, Germany, Belgium and Luxemburg using their products, was about 10,000,000,000 francs (\$2,000,000,000).

"In addition to the huge reserves the reasons for the value of the Lorraine fields are their proximity to great coking coal fields of Europe, the low cost of mining, the suitability of the ore for the basic process, and their excellent location with reference to transportation.

"And while Germany lost its hold on this vast possession, the Ruhr fields would have enabled it to keep the whip hand over France.

"Both the Campine district of Belgium and the Saar basin, now controlled by France, have fields of coal which would be suitable for coking purposes. However, it will take years before production of this coking coal can be brought to a point where it will rival the Ruhr production. Moreover, the Ruhr coal is of a considerably better grade than that of the other two fields and the cost of mining is less.



"The Westphalian fields, which include the Ruhr, are in the lower Rhine basin. The more important mines are in the Ruhr district, east of the Ruhr, although the Krefeld basin just west of the river is of great importance. At present about 70 per cent of Germany's coal reserves are in the Westphalian basin. In 1913 these mines produced 114,487,000 tons of coal and 22,554,000 tons of coke. These figures were, respectively, 60 and 70 per cent of Germany's output.

"Although France produces considerable coal, with the exception of the potential resources of the Saar basin, it produces but little suitable for coking purposes. Consequently it must import this necessity.

"Therefore, the authors of the bulletin point out that to obtain the full economic benefits of the two fields the two nations owning them must act in harmony. For Germany to refuse to give France sufficient coke to operate its mills would result in France closing the supply to the former of Lorraine iron ore. Should France refuse to sell iron ore to Germany the latter could shut off the coal.

"With both nations forced to import their required raw materials, their cost of production would increase immeasurably, and it would be difficult for them to compete with Great Britain and the United States in the world market.

"Although France controls the Ruhr coal mines for the time being, it is asserted by European students that the cost of mining them will be such as to offset the benefits obtained. However, should the French succeed in overcoming the present difficulties of production they will be in a position to dominate the European market."

It is a well known fact that the shortage of coal has forced Belgium and Italy to obey the orders of France. The French possession of the Ruhr will affect the vital interests of other nations of Europe and will create a new political and economical situation in Europe. Germany is compelled to beg coal from France so as to maintain her industries or the very life of the German nation. With the exception of Great Britain, practically whole Europe must come to France for coal, for she has a sole monopoly on the European coal deposits.

There is no doubt in the mind of the diplomats that the occupation of the Ruhr will not be tolerated by the other nations, as the occupation of the Ruhr means a French dictatorship of Europe's economic life; will disturb the international relation and future security of peace in Europe. The world will ask why should France now reestablish the old Napoleon Empire and become the dictator of Europe.

#### FRENCH ARMY

On March 5, 1923, in a highly significant speech Mr. Maginot, minister of war, pleading before the senate to make the period of military service a year and a half instead of a year, as many politicians desire, made a full statement of France's military policy.

"In the present state of Europe, in the midst of distress, unsatisfied claims, divisions and dangerous ambitions left by the war, like so many embers from which the belligerent madness of the peoples may once more be set aflame, one must be militarily strong, if one wishes to maintain and impose peace.

"France's pacific intent would have weighed less heavily in the settlement of certain international conflicts if her determination had seemed less firm and if we had committed the error of carrying our disarmament to the point of impotence, as some advised us to do, while others were abstaining from such imprudence.

"A nation must have an army nicely fitted to its policies—that is to say, to its needs. France must be able to impose peace and force Germany to pay, and if, despite these precautions, war occurred, the standing army must be able to cover

mobilization, take the initiative and carry the fighting immediately into the enemy's territory.

"In time of peace, France must have sufficient troops to guard the Rhine, wring reparations payments from Germany by coercion, without fresh mobilization, keep up the training and mobilization framework in the interior of France and garrison the French colonies. For a normal guard on the German frontier, whether, as now, from Basel to Cologne, or whether, as it would be later, when France had evacuated the Rhineland. France needed a minimum of thirty-two divisions for the length of this frontier of 500 kilometers (312.5 miles). Leaving two behind and holding five in reserve, the other twenty-five divisions would each have twenty kilometers (12.5 miles) of frontier to cover.

"Pending liquidation of the peace terms, France needed another twelve divisions, or six for the army of the Rhine, and six more to re-enforce this army, and be ready to carry out coercion at any time against the recalcitrant debtor, the war minister explained.

"In terms of effectives the new French army with a year and a half of service would be 660,000 men, of whom 203,000 would be for colonial service and 457,000 for France and the Rhineland."

Gen. Delacroix points out that Premier Poincare does not need to mobilize the classes even for extensive increases in the occupied territory with 200,000 men available.

I may mention the fact that France's overseas domains is 10,550,000 square kilometers, with a total population of 58,000,000, from which to draw the necessary military reserves, so that she is able to place on the European field 1,000,000 additional soldiers from her own colonies. And so as to be in position to carry these troops she is now designing a 6,000 ton submersible liner, which has been designed for the French naval ministry by Mr. Simonnot, one of its chief engineers.

The sole purpose of these giant submarines will be to transport troops and supplies from Algiers, Morocco, etc., in case England would control the Mediterranean. All of the boats will be equipped with a Diesel motor which is built at the Creusot Works. The submarines will be able to carry several hundred men. Each of the submarines will be in position to transport a large number of French colonial troops to the motherland in a short time.

#### ENTERING THE RUHR

France entered the Ruhr under Article 244, Annex II, Section 18. The excuse she had for entering the Ruhr was to send only civil administrative officials into that territory. But all the other governments know that the civil administrative officials will go further; that Germany would not submit meekly to such an invasion without resistance, and consequently Bonar Law, the British Prime Minister, made a careful analysis of the Ruhr invasion when he said Poincare and France wanted money but they have been afraid to allow Germany to become strong enough to pay. They were determined to seize the Ruhr so as to satisfy French public opinion which could not be satisfied with anything else except the occupation of the Rhineland. But Poincare is afraid to fix any sum. The Germans may pay it, may borrow enough money to pay off every cent she owes France. But Germany must be kept in submission forever! Now, according to Bonar Law, France has obtained the Ruhr, the jugular vein of the German nation, and she has cut it.

Under which integral part of the Treaty of Versailles, which the French consider

both international law and French law, did France enter the Ruhr? She entered it under the French law but not under the international law. Article 244, Annex II, Section 18, reads as follows:

"The measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals and in general such other measures as the respective Governments may determine to be necessary in the circumstances."

According to this Article, it provides that the measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals. We take it for granted that Germany is in default, in voluntary or forcible default. Now the question comes up whether France and Belgium can act alone. The Germans dispute it; Great Britain would not express herself, neither would the United States. As the Treaty of Versailles was signed by the Allied and Associated Powers they must act unanimously as partners.

France entered the Ruhr according to Article 244, but this invasion is contrary to the decisions of the Peace Conference. I quote here an article from "The World" (New York), which was published January 26, 1923:

#### "FRANCE BLOCKED INVASION OF HUNGARY BY ROUMANIA TO COLLECT REPARATIONS

"Important light on the interpretation of the clause in the Peace Treaty on which France bases the legality of her seizure of the Ruhr was obtained from a reliable source by The World last night.

"The documentary proof shows that France assisted in 1919 in abruptly halting a military occupation of Hungary by Roumania for collecting reparation payments, in an incident strikingly similar to her present occupation of the Ruhr.

"France contends that the word 'respective' in Part VII, Annex II, paragraph 18 of the Treaty of Versailles legalizes her invasion of the Ruhr by giving her independent action, and England's chief law officers claim that the word does not give any nation such a right.

"John Foster Dulles of No. 49 Wall Street, who is understood to have drawn the clause under discussion, declined to reveal his interpretation last night.

"The document sent by the Peace Conference to Roumania in 1919, however, a copy of which was obtained by The World yesterday, throws light on the manner in which the conference, including France, regarded an independent effort to collect reparations by one of the Allied Governments.

"The note is substantially an ultimatum to Roumania to stop her military occupation of Hungary. It was proposed by the Reparation Commission, of which M. Loucheur of France was then Chairman, and was approved by the Supreme Council. M. Clemenceau, President of the Peace Conference, signed it.

"Extracts from the note to Roumania, dated August 23, 1919, follow:

"The Peace Conference is in receipt of information, the accuracy of which, unfortunately, it seems impossible to question, that Roumanian forces in Hungary are continuing the systematic seizure and removal of Hungarian property.

"In view of the recent correspondence between the Peace Conference and the Roumanian Government, it is difficult for the Allied and Associated Powers to

comprehend such action of the Roumanian Government, except on the hypothesis that the Roumanian Government ignores the accepted principles of reparation.

"The Roumanian Government, as a participant in the labors of the Peace Conference and as a signatory of the Treaty of Peace with Germany, should not, however, be unaware of the care which has been exercised by the Allied and Associated Powers to provide for an orderly scheme of reparation.

"If indemnification for damage suffered had been left dependent upon such factors as geographical proximity to enemy assets or upon the result of competition between Allied states in possessing themselves of such assets, it would have been inevitable that flagrant injustices and serious discord would result. Accordingly the treaty with Germany, to which Roumania is a party, consecrates certain fundamental principles of reparation notably:

"(3) A central Reparation Commission is established as an exclusive agency of the Allied and Associated Powers for the collection and distribution of enemy assets by way of reparation. . . .

"The acts referred to likewise depart from the agreed principle that the Reparation Commission should act as the exclusive agency for all of the Allied and Associated Powers in the collection of enemy assets by way of reparation.

"The further possible consequences of the course of action which Roumania appears to have adopted are so serious and fraught with such danger to the orderly restoration of Europe that the Allied and Associated Powers would, if necessity arose, feel constrained to adopt a most vigorous course of action to avoid these consequences.

"For it is obvious that if the collection of reparation were to be allowed to degenerate into individual and competitive action by the several Allied and Associated Powers, injustice will be done and cupidity will be aroused and, in the confusion of un-co-ordinated action, the enemy will either evade or be incapacitated from making the maximum of reparation.

"The Allied and Associated Powers cannot, however, believe that the Government of Roumania would create and force the Allied and Associated Powers to deal with such a danger.

"The Peace Conference accordingly awaits from the Government of Roumania an immediate and unequivocal declaration:

"(1) That the Government of Roumania recognizes the principle that the assets of enemy states are a common security for all of the Allied and Associated Powers.

"(2) That it recognizes the Reparation Commission as the exclusive agency for the collection of enemy assets by way of reparation.'

"At the time the above note was sent to Roumania, that country had its guns trained on the Parliament buildings of Budapest and it had just brought the collapse of the Hungarian Government, newspaper reports of that date show.

"Secretary Hoover, speaking before the Peace Conference on that date, was quoted as saying the Roumanians had 70,000 soldiers in Hungary, while he thought 2,000 could police the country, as Hungary had been disarmed.

"This note represented French opinion on the issue of reparations at that time, when Roumania was the especial protégé of France. It brings out into high relief how far the authors of the Treaty of Versailles were from accepting the doctrine which M. Poincare now invokes and how little they thought of the legality of the action M. Poincare has taken."

There is another evidence that no single power can act independently and that the Allies must act together. I refer to the Conference of San Remo. In the Conference of

San Remo it was decided against France that a single power or powers of the Allies can carry through any act which in any way would affect the other Allies. In the British Parliament of May 18, 1922, Chamberlin made the remark that "she must act in cooperation with all the Allies."

I am fully convinced that Section 18 uses the words "respective Governments," but there is no doubt in my mind that these apparently meant "Governments of the Allied and Associated Powers," taken collectively as one of said groups.

This interpretation must be accepted. Mr. Barthou of the Reparation Commission accepted this interpretation. In his book "The Treaty of Peace" he states as follows:

"If Germany evades her obligations, the Commission will acquaint the interested Power, and the Allied and Associated Powers will be able in common accord (d'un commun accord) to take measures of prohibition and reprisal which Germany is bound not to consider as acts of war."

In the Hungarian-Roumanian question in 1919 it was well stated by the Reparation Commission "that if the collection of reparation were to be allowed to degenerate into individual and competitive action by the several Allied and Associated Powers, injustice will be done and cupidity will be aroused, and in the confusion of uncoordinated action the enemy will either evade or be incapacitated from making the maximum of reparation."

During the war the Allies acted together. This pact of the Allies is best shown in the agreement signed at London the 30th day of November, 1915:

"The Italian government having decided to accede to the declaration between the British, French and Russian governments signed in London on Sept. 5, 1914, which declaration was acceded to by the Japanese government on Oct. 19, 1915, the undersigned, duly authorized thereto by their respective governments, declare as follows:

"The British, French, Italian, Japanese and Russian governments mutually engage not to conclude peace separately during the present war.

"The five governments agree that when terms of peace come to be discussed no one of the allies will demand conditions of peace without previous agreement with each of the other allies.

"Done at London this 30th day of November, 1915.

"E. Grey, Paul Cambon, Imperiali, K. Inouye, Brenckendorff.

"The signatories are, respectively, the British minister for foreign affairs and the ambassadors of the governments named."

Article 244, Annex II, Section 11, lays down the following rulings:

"The Commission shall not be bound by any particular code or rules of law or by any particular rule of evidence or of procedure but shall be guided by justice, equity and good faith. Its decisions must follow the same principles and rules in all cases where they are applicable. It will establish rules relating to methods of proof of claims. It may act on any trustworthy modes of computation."

Even if the Versailles Treaty is creating new rules it must be considered for the present a part of the international law. As the Reparation Commission should be guided by justice, equity and good faith, it adopted the principles, rules and customs of international law; and these rules are binding on all the members of the international community.

It is true that according to the above Section 11 the Reparation Commission shall not be bound by any particular code or rules of law; still its decisions must follow those rules which shall be guided by justice, equity and good faith.

To all appearances, the Reparation Commission has a legislative power whose function seems to be the making of new laws. It has a law-making power whose function is framing rules relating to methods of proof of claims. The Reparation Commission has judicial power, the power belonging to the office of a judge as an authority on judicial proceedings, determining what is right in any given case relating to the methods of proof of claims. It has an administrative power, the administration, the management and direction on the reparation question. It is a new person or subject, I may say, of international law who enjoys, according to the Treaty, such prerogatives which none of the Commissions created by international conventions or congresses ever enjoyed. But being an international person the Reparation Commission became a subject of international law. It had received the common consent of the Allied Powers.

Lord Chief Justice Alverstone in the case of *West Rand Central Gold Mining Co. v. The King* (L. R. 1905, 2 K. B. 391), said:

"It is quite true that whatever has received the common consent of civilized nations must have received the assent of our country, and that to which we have assented along with other nations in general may properly be called International Law, and as such will be acknowledged and applied by our municipal tribunals when legitimate occasion arises for those tribunals to decide questions to which doctrines of International Law may be relevant."

Lord Alverstone made the following warning: "But any doctrine so invoked must be one really accepted as binding between nations, and the International Law sought to be applied must, like anything else, be proved by satisfactory evidence, which must show either that the particular proposition has been recognized and acted upon by our own country, or that it is of such a nature and has been so widely and generally accepted that it can hardly be supposed that any civilized State would repudiate it. The mere opinions of jurists, however eminent or learned, that it ought to be so recognized, are not in themselves sufficient. They must have received the express sanction of international agreement, or gradually have grown to be a part of International Law by their frequent practical recognition in dealings between various nations." (Scott "The Legal Nature of Int'l Law," in 1 A. J. 855 ff; Westlake, in 22 Law Quarterly Review, 14-26; and 6 Columbia Law Review, 49-50.)

The United States courts always adhered to the customs of international law. As early as 1804, Chief Justice Marshall declared in the case of the "*Charming Betsy*" (2 Cranch, 64, 118) "an act of Congress should never be construed to violate the law of nations if any other possible construction remains." In the case of *Nereide* (1815, 9 Cranch, 383) he declared "international law to be part of the law of the land."

Did Germany try to default in her deliveries of coal, wood, and cash payments? I shall quote here a letter of Mr. W. R. Heatley, who for three years represented the British Government on the Coal Commission at Essen. The letter was addressed to the editor of the "London Times" on February 1, 1923, and reads as follows:

"To the Editor of the Times:

"Sir: In view of the public interest at present being taken in the position of the Ruhr and its coal production, it may be of interest to your readers to know something of what was the attitude of the coal owners and workmen in the Ruhr

district towards coal deliveries 'in reparation' to the Allies during the period between the coming into force of the Versailles Treaty and the present position of affairs.

"As the late chairman of the Essen Interallied Reparation Authority, I have had during that period exceptional opportunities of studying the changing phases of the question. In the spring of 1920, I took the chair at a meeting held at Waterscheid, near Essen, when representatives of the Allied Powers met about forty representative miners for the purpose of explaining to them the necessity and justice of the demands made upon the German coal mines to deliver coal in recompense for the coal mines destroyed in France and in Belgium. It was an agreeable and somewhat unexpected pleasure to us to find a ready understanding on the part of the German miners and a generous admission of the fairness of the claim. Not only were our statements met with acquiescence, but the miners who spoke were applauded when they gave as their opinion that the claim on the German coal mines was just and reasonable.

"So much for the attitude of the workers in the Ruhr before public opinion there was irritated by the indefensible seizure of the ports of Duisburg and Ruhrort and the city of Dusseldorf.

'So general was the spirit of amity and willingness to redress, which was also shared by the coal owners, that, partly as the outcome of this Waterscheid meeting, an arrangement was come to by which the miners worked extra shifts at the collieries. This resulted in an extra production of about one million tons of coal per month—equivalent, roughly, to the French demands.

"Unfortunately, this spirit was not proof against the illegal seizure of Rhine towns in violation of the Treaty of Versailles and the further seizure of the Upper Silesian coal field by what appears to the Germans to be a gross miscarriage of justice on the part of a sub-committee appointed by the League of Nations. The extra shifts ceased and the extra production which had resulted from them ceased also.

"Nevertheless, the German coal owner continued his efforts to work the reparation deliveries more smoothly and more effectively. In 1921 it was proposed to the French that, in order to avoid some of the confusion that was frequently arising by wrong or improperly chosen coal being sent to French consumers by official experts or official inexperts, a better system would be for the German coal syndicate to make the contracts direct with the French consumer—the money being, of course, paid to the Reparation Commission direct. This suggestion was vetoed by the French, apparently for the reason that it would have released Germany from the somewhat ignominious attitude of rendering forced service at the behest of the victor.

"I state these facts in order to declare that during the three years in which I represented the British Government on the Coal Commission at Essen, I never found any instance of wilful opposition on the part of either the masters or men to the fulfilment of the coal reparation clauses of the Treaty of Versailles. Difficulties there were, at times, but they were those easily understandable as cases of force majeure, which every merchant or manufacturer, in any country whatsoever, knows from his own experience are inevitable in the execution of commercial contracts. The failures to deliver were only percentual, and were sometimes due to the failure of the French distributors to give forwarding instructions. It is to be noted that France could not at all times dispose of all the German coal due for delivery. This was especially the case when trade was depressed in the iron and steel trade in France.

"I leave it to others to find a justification for the present altered attitude of France in the matter of reparation deliveries of coal. May it be that the stocks of German coal in France are not so large that she prefers to suspend them for a considerable period, and has chosen to swing a sabre in the Rhineland rather than to receive coal?

"Yours truly,

"43 Park Lane, W. I.

(Signed) W. R. HEATLEY."

Mr. Boyden, the unofficial representative of the United States Government at the Reparation Commission said:

"The voluntary default, which by paragraph 18, of Annex 2, Part 8 of the Treaty of Versailles would entitle the respective powers who signed the treaty to take action against Germany, is dependent on the fact that Germany either did or did not do something of its own accord which at the time it did or did not do it, would to its knowledge lay Germany open to a charge of being in default.

"The deficiencies recurred every month, and therefore Germany had ample time in which to take such precautions as were necessary to prevent the shortage from continuing. On these grounds, and for strictly juridic reasons, I am definitely of the opinion that Germany defaulted.

"It might also be pointed out that forbearance was shown by the commission during August and October last regarding the quantities of coal and timber which Germany was to have delivered.

"Therefore, I agree with the legal arguments advanced by the French, Belgian, and Italian delegates.

"On the other hand I think that the default was due more to the Versailles Treaty than the Germans."

"The Treaty has placed an intolerable burden on Germany with regards to the payment of cash and materials," added Mr. Boyden in referring to the London schedule of payments which was made an integral part of the Treaty. "Under this schedule the reparations bill stands at 132,000,000,000 gold marks (\$33,000,000,000)."

The measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals and in general such other measures as the respective Governments may determine to be necessary in the circumstances.

The covenant of the League of Nations, which may also be considered as an annex of the Versailles Treaty, provides for a penal paragraph which defines the economic and financial reprisals.

On September 4, 1919, Woodrow Wilson, speaking at Memorial Hall, Columbus, Ohio, stated as follows:

"If any member of that league, or any nation, not a member, refuses to submit the question at issue either to arbitration or to discussion by the council there ensues automatically, by the engagements of this covenant, an absolute economic boycott.

"There will be no trade with that nation by any member of the league; there will be no interchange of communication by post or telegraph; there will be no travel to or from that nation; its borders will be closed; no citizen of any other state will be allowed to enter it and no one of its citizens will be allowed to leave it.

"It will be hermetically sealed by the united action of the most powerful nations of the world, and if this economic boycott bears with unequal weight, the members of the league agree to support one another and to relieve one another of any exceptional disadvantages that may arise out of it.

"And I want you to realize that this war was won not only by the armies of



the world but it was won by economic means as well. Without the economic means the war would have been much longer continued. What happened was that Germany was shut off from the economic resources of the rest of the globe and she could not stand it; and a nation that is boycotted is a nation that is in sight of surrender.

"Apply this economic, peaceful, silent, deadly, remedy and there will be no need for force.

"It is a terrible remedy. It does not cost a life outside the nation boycotted, but it brings a pressure upon that nation which, in my judgment, no modern nation could resist."

The economic situation made the Allies victorious. The starving Germany had to lay down her arms. No other reprisal is permissible than that stated in Article 16 of the Covenant League of Nations.

As a security or, in better terms, as a pledge for the execution of the Treaty of Versailles by Germany, Germany had to furnish guarantees which are stated under Articles 428 to 432, and which read as follows:

"Article 428. As a guarantee for the execution of the present Treaty by Germany, the German territory situated to the west of the Rhine, together with the bridgeheads, will be occupied by Allied and Associated troops for a period of fifteen years from the coming into force of the present Treaty.

"Article 429. If the conditions of the present Treaty are faithfully carried out by Germany, the occupation referred to in Article 428 will be successively restricted as follows:

"(1) At the expiration of five years there will be evacuated: The bridgeheads of Cologne and the territories north of a line running along the Ruhr, then along the railway Julich, Duren, Euskirchen, Rheinbach, thence along the road Rheinbach to Sinzig, and reaching the Rhine at the confluence with the Ahr; the roads, railways and places mentioned above being excluded from the area evacuated.

"(2) At the expiration of ten years there will be evacuated: The bridgehead of Coblenz and the territories north of a line to be drawn from the intersection between the frontiers of Belgium, Germany and Holland, running about from 4 kilometres south of Aix-la-Chappelle, then to and following the crest of Forest Gemund, then east of the railway of the Urft Valley, then along Blankenheim, Valdorf, Dreis, Ulmen to and following the Moselle from Bremm to Nehren, then passing by Kappel and Simmern, then following the ridge of the heights between Simmern and the Rhine and reaching this river at Bacharach; all the places, valleys, roads and railways mentioned above being excluded from the area evacuated.

"(3) At the expiration of fifteen years there will be evacuated: The bridgehead of Mainz, the bridgehead of Kehl and the remainder of the German territory under occupation.

"If at that date the guarantees against unprovoked aggression by Germany are not considered sufficient by the Allied and Associated Governments, the evacuation of the occupying troops may be delayed to the extent regarded as necessary for the purpose of obtaining the required guarantees.

"Article 430. In case either during the occupation or after the expiration of the fifteen years referred to above the Reparation Commission finds that Germany refuses to observe the whole or part of her obligations under the present Treaty with regard to reparation, the whole or part of the areas specified in Article 429 will be re-occupied immediately by the Allied and Associated forces.

"Article 431. If before the expiration of the period of fifteen years Germany complies with all the undertakings resulting from the present Treaty the occupying forces will be withdrawn immediately.

"Article 432. All matters relating to the occupation and not provided for by the present Treaty shall be regulated by subsequent agreements, which Germany hereby undertakes to observe."

Here the Allies, as security, can occupy the Rhine for a period of fifteen years, a guarantee which is more crushing, as Chancellor Cuno said, "than any yet incorporated in any peace treaty between civilized nations." These are the territorial limitations of guarantee which should be recognized by France and all the Allies. Any further territory occupied by the Allies is a violent breach of peace and is a breach of the Versailles Treaty. Articles 428 to 432 establish the zone and occupation of the territory which shall be considered as a guarantee for the fulfilment of the treaty provisions. No further encroachment on German territory is provided for in the Peace Treaty. The entry of the Ruhr Valley by the French made the Treaty of Versailles null and void.

We have to deal with two conflicting articles, Article 244 and Articles 428 to 432. We rest on Poincaré's pretention that the Versailles Treaty is an international law and the law of France. We have to submit to the doctrines and rules laid down by international law.

"Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states, and which have for their object the mitigation of the miseries of war.

"No community can be allowed to enjoy the benefit of national character in modern times without submitting to all the duties which that character imposes. A Christian people who exercise sovereign power, who make treaties, maintain diplomatic relations with other states, and who should yet refuse to conduct their military operations according to the usages universally observed by such states, would present a character singularly inconsistent and anomalous." (Mr. Webster, Sec. of State, to Mr. Thompson, minister to Mexico, April 15, 1842, Webster's Works, VI. 437).

"If a government 'confesses itself unable or unwilling to conform to those international obligations which must exist between established governments of friendly states, it would thereby confess that it is not entitled to be regarded or recognized as a sovereign and independent power.'" (Mr. Evarts, Sec. of State, to Mr. Foster, August 2, 1877, MS. Instr., Mexico, XIX. 357).

The Versailles Treaty cannot be considered international law as international law is everywhere acknowledged, and the Versailles Treaty is not acknowledged everywhere. Force cannot rule. Reason and conscience of mankind is the ruling doctrine of international law. In preparing a treaty it is the author's duty to consider whether each of its articles is in accordance with the fundamental principles, natural rights, and justice, whether the conscience of mankind will pronounce it just and equitable. In each treaty the leading reason is the law and the points in issue when counteracting the legal reasons must be considered wrong "and never law."

"The law of nations is 'to be tried by the test of usage. That which has received the assent of all must be the law of all.'" (Marshall, C. J., *The Antelope*, (1825) 10 Wheat. 66, 120-121).

France nor any other single nation has the right to change international law, as international law rests upon the consent of the civilized nations.

"International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators, who, by years of labor, research, and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their author concerning what the law ought to be, but for trustworthy evidence of what the law really is. (Hilton v. Guyot, 159 U. S. 113, 163, 164, 214, 215).

As long as France, Belgium and Italy are members of the family of nations they have to submit to the rules of international law, otherwise they place themselves outside the circle of civilized nations.

"The statesmen and jurists of the United States do not regard international law as having become binding on their country through the intervention of any legislature. They do not believe it to be of the nature of immemorial usage, 'of which the memory of man runneth not to the contrary.' They look upon its rules as a main part of the conditions on which a state is originally received into the family of civilized nations. This view, though not quite explicitly set forth, does not really differ from that entertained by the founders of international law, and it is practically that submitted to, and assumed to be a sufficiently solid basis for further inferences, by governments and lawyers of the civilized sovereign communities of the day. If they put it in another way it would probably be that the state which disclaims the authority of international law places herself 'outside the circle of civilized nations.'" (Maine, International Law, 37-38).

As Lord Talbot declared "The law of nations, in its full extent, was part of the law of England."

"The 'law of nations' being 'in its full extent' a 'part of the law' of Pennsylvania, to be 'collected from the practice of different nations and the authority of writers,' a citizen of France was tried, convicted, and sentenced at common law for an assault on the secretary of legation of France in the French minister's dwelling, and an assault and battery on the same person in the streets." (Respublica v. De Longchamps, court of oyer and terminer at Philadelphia (1784), 1 Dallas, 111).

Here I may also quote the opinion of Jefferson:

"The law of nations makes an integral part . . . of the laws of the land." (Mr. Jefferson, Sec. of State, to Mr. Genet, French Minister, June 5, 1793, Wait's Am. St. Pap. I. 30; Am. State Papers, For. Rel. I. 150).

If the Versailles Treaty is to be a part of the international law, we will give an interpretation of the same in accordance with those sources of international law which we consider authentic.

"Wheaton places among the principal sources of international law 'Text-writers of authority, showing what is the approved usage of nations, or the general opinion respecting their mutual conduct, with the definitions and modifications introduced by general consent.' As to these he forcibly observes: 'Without wishing to exaggerate the importance of these writers, or to substitute in any case their authority for the principles of reason, it may be affirmed that they are generally impartial in their judgment. They are witness of the sentiments and usages of civilized nations, and the weight of their testimony increases every time that their authority is invoked by statesmen, and every year that passes without the rules laid down in their works being impugned by the avowal of contrary principles.' Wheaton's International Law (8th ed.), Sec. 15.

"Chancellor Kent says: 'In the absence of higher and more authoritative sanctions, the ordinances of foreign states, the opinions of eminent statesmen, and the writings of distinguished jurists are regarded as of great consideration on questions not settled by conventional law. In cases where the principal jurists agree the presumption will be very great in favor of the solidity of their maxims, and no civilized nation that does not arrogantly set all ordinary law and justice at defiance will venture to disregard the uniform sense of the established writers on international law.' 1 Kent Com., 18." (Gray, J., delivering the opinion of the court, *The Papete Habana* (1900), 175 U. S. 700).

Now let us come back to the two conflicting articles, Article 244 versus Articles 428 to 432.

"Treaties should be interpreted 'in a spirit of *uberrima fides*,' and in a manner to carry out their manifest purpose." (*Tucker v. Alexandroff* (1902), 183 U. S. 424, 437).

"A treaty is not only a law, but also a contract between two nations, and, under familiar rules, it must, if possible, be so construed as to give full force and effect to all its parts." (*Goetze v. U. S.* (1900), Fed. Rep. 72).

According to the opinion of Secretary Livingston "the whole instrument should be considered."

"There is no rule of construction better settled either in relation to covenants, between individuals or treaties between nations than that the whole instrument containing the stipulations is to be taken together, and that all articles in *pari materia* should be considered as parts of the same stipulations." (Livingston, Sec. of State, to Baron Lederer, Nov. 5, 1832).

Articles 428 to 432 furnish a full guarantee, give a promise of performance, a promise of payment. If a default is made a guarantee is provided for. What is a guarantee? A guarantee is a due performance of a contract that some particular thing should be done and for the fulfilment of the obligation a certain guarantee has to be given. An absolute guarantee had been given by the Germans for the fulfilment of the contract. But if default is made the country hypothecated to the guarantee should be lost by the guarantor. We may, in better terms, say that a conditional conveyance of an entire province had been turned over to the Allies as a security for the fulfilment of the Treaty of Versailles.

Vattel expresses himself on treaties in the following way:

"The reason of the law, or of the treaty—that is to say, the motive which led to the making of it, and the object in contemplation at the time, is the most certain clue to lead us to the discovery of its true meaning; and great attention should be paid to this circumstance, whenever there is question either of explaining an obscure, ambiguous, indeterminate passage in a law or treaty, or of applying it to a particular case. When once we certainly know the reason which alone has determined the will of the person speaking, we ought to interpret and apply his words in a manner suitable to that reason alone; otherwise, he will be made to speak and act contrary to his intention, and in opposition to his own views." (Vattel, Book II, ch. 17, sec. 287).

But again international law provides for the collision of stipulations.

"Where treaties or treaty stipulations are in collision or opposition—that is, where two promises are not contradictory in themselves, but are of such a nature as to render it impossible to fulfil both at the same time—Vattel lays down the following rules for determining which shall have the preference. 1st. If what is permitted is incompatible with what is prescribed, the latter is to be preferred.

2nd. What is permitted must yield to what is forbidden. 3rd. What is ordained must yield to what is forbidden. 4th. Other things being equal, that of the most recent date is to be preferred. 5th. A special promise is to be preferred to a general one. 6th. What, from its nature, cannot be delayed is to be preferred to what may be done at another time. 7th. When two promises or duties are incompatible, that of the highest honesty and utility is to have the preference. 8th. If we cannot perform at the same time two promises to the same person, he may select which he prefers. 9th. The stronger obligation has the preference over the weaker. 10th. What is promised under the higher penalty has the preference over one with the lesser penalty, or with no penalty at all." (Vattel, *Droit des Gens*, lib. II. ch. xvii, No. 311-322; Puffendorf, *De Jure Gent*, lib. v. cap. xii. No. 23; the "Ringerode Jacob," I Rob. 89 *Richardson v. Anderson*, 1 Camp. R. 65, note. Helleck, Ch. 8, p. 322-3, Vol. I).

Now the higher penalty to be taken into consideration was the territorial occupation of Germany according to Articles 428 to 432. It was a stronger obligation which has the preference over the weaker. It was a special promise which is to be preferred over a general one.

All the Allies desired that the Reparation Commission should function. Article 244, Annex II, Section 13, paragraph (f) reads:

"In case of any difference of opinion among the delegates, which cannot be solved by reference to their Governments, upon the question whether a given case is one which requires a unanimous vote for its decision or not, such difference shall be referred to the immediate arbitration of some impartial person to be agreed upon by their Governments, whose award the Allied and Associated Governments agree to accept."

The function of the Reparation Commission is given by the official Commentator of the Grey-Balfour Institute (Temperley, *History of the Peace Conference of Paris*, Vol. 2, p. 89:

"In other words the Reparation Commission has no means of enforcing any decision except by invoking the authority of Governments. In this way the actions of the Commission are ultimately made subject to the sanction of public opinion in the different Allied countries, and pressure can only be brought to bear on Germany by international action which would, in other cases, amount to an act of war, and would in this case be attended by the hurtful consequences resulting from a partial renewal of war of reprisals. The practical limitations, which this form of sanction will impose upon the authority of the Commission, are obvious. Except by postponing the date for the evacuation of the left bank of the Rhine, the Allies can only enforce a demand which Germany resists if public opinion is prepared to support the Government in taking action, which must result in further diminishing Germany's capacity to pay, in further postponing the receipt of reparation payments, and in further prejudicing the prospects of a return to normal economic life and normal international relations. Such action would conflict with the expressed intentions of the Treaty to maintain 'Germany's social and economic life' and not to 'interfere unduly with the industrial requirements of Germany.' It may confidently be expected that, except in the last resort, action of this kind would not be taken."

Another exposé of the function of the Reparation Commission is given by Norman H. Davis, formerly President of the Trust Company of Cuba in Havana, and the Finance Commissioner of the Peace Conference for the United States, before the Senate Commission (Page 101):

"Senator Johnson of California: And you gentlemen have reached the conclusion that it was a note for a greater sum than Germany was able to pay?"

"Mr. Davis: Yes."

"Senator Johnson of California: You look forward, however, finally to the reparation commission, composed as you have indicated, scaling that down so that she can pay. The scaling down would depend upon obtaining the unanimous consent of the reparation commission hereafter, would it not?

"Mr. Davis: Yes.

"Senator Johnson of California: And without unanimous consent the world is confronted today with a bill that has been placed against Germany greater than it is possible for her to pay and under the terms of this treaty she may be required in various fashions, as they are indicated, to attempt to pay that bill.

"Mr. Davis: I think not. In the first place, Germany delivers bonds for only \$16,000,000,000, and Germany can not be called upon to deliver any more bonds without the unanimous consent of the reparation commission. In other words, we insisted that Germany must not be put in the position of having obligations, bonds outstanding, which might be in excess of what she could reasonably be expected to pay, and we avoid that danger in that way.

"Senator Johnson of California: With the debt hanging over her?

"Mr. Davis: Yes, it is a book account, that is true, there is that book account.

"Senator Johnson of California: Is there any mode by which that book account may be collected or enforced?

"Mr. Davis: No.

"Senator Johnson of California: To what extent, then, may the reparation commission enforce its collection hereafter?

"Mr. Davis: My interpretation is that the reparation commission cannot enforce the collection of anything beyond the bonds which they have in their possession or that have been delivered to them.

"Senator Johnson of California: Is that your reading of the treaty?

"Mr. Davis: Yes.

"Senator Johnson of California: And is that your reading concerning the taxation clause, the industrial clauses, and the like?

"Mr. Davis: Yes; it is.

"Senator Johnson of California: And in respect to shipping and the various things that Germany is to deliver, is that your reading of the treaty?

"Mr. Davis: That will be all credited.

"Senator Johnson of California: I understand that, that that will all be credited, but the point is, has not the reparation commission the power—whether it will exercise it or not is a different proposition—to endeavor to collect this bill that Germany now owes?

"Mr. Davis: I do not understand that they can do anything toward collecting anything except the bonds that they have, that have been delivered to them.

"Senator Johnson of California: Do you interpret the treaty to mean that the reparation commission can do anything concerning the compelling the performance of the terms of the treaty by Germany except the collection of the bonds?

"Mr. Davis: From a practical standpoint and from a reading of the treaty, I do not see how they can do anything else.

"Senator Johnson of California: I am very glad to have your construction of it, because, as I understand the terms, I had quite a different view."

The Reparation Commission and the Versailles Treaty do not give France any right to invade the Ruhr. But France wants war, desirous to establish an iron ring of customs and barriers around the Ruhr and the German cities for no other purpose than annexation. France desires to remodel the political map of Europe. Political supremacy of Europe guided France in invading the Ruhr.

### PRIVATE PROPERTY

(Hague) "Article XLVI.—Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

"Private property cannot be confiscated."

According to Article 46 private property cannot be confiscated. Private property on land is exempt from seizure or confiscation, and this seizure extends even to cases of absolute conquest.

Spaight in his War Rights on Land calls Article 46 the Magna Charta of War Law, that article which secures for the citizens of an occupied territory immunity from material or moral damage at the hands of the enemy. It is the bond which war law gives him for the security of his person, property, and religious belief.

### EXPULSION

During the first week in March more than nine hundred persons had been driven out from the German occupied territories. According to the well established international rule each state has the right to exclude foreigners from the country whenever a public interest requires such exclusion. And France in time of peace, without the proper respect for the rights of the German nation, deported German citizens from their own home.

Now let us see what authorities have to say on this matter:

Pradier-Fodéré says that "the expulsion is legitimate only so far as it is demonstrated with evidence that the presence of those whom it affects imperils the peace within or without the security of the governors or of the governed; that, in a word, it compromises one of the interests which the state guards. It is necessary that the danger be certain, that the menace be effective; the administration should not recur to this harsh measure except so far as the condition of the individuals who are the object of it inspires real and well-founded disquietude either in the inhabitant of the country or in the government itself, or perhaps even in a friendly government. The universal conscience protests against the arbitrary use of the right of expulsion."

Heffter says that: "No state can remove from its soil the subjects of another state whose nationality is duly established nor expel them after having received them, without having good reason for so doing, which it is bound to communicate to the government of which they are subjects." He further says that "the arbitrary and unjustifiable expulsion of a foreigner may be the point of departure of diplomatic reclamations on the part of the state of which he is a citizen. This point is above all controversy."

He further says that "it is not a complete justification of the expulsion from the point of view of international law to pretend that it was not an act

directed against the government of the state to which the individual expelled belonged."

Rolin-Jacquemyns says that "the right of expulsion and the mode of exercise of this right may be regulated by international treaties; but in the absence of treaties the state to which the expelled individual belongs has the right to know the motives of the expulsion, and the communication of those motives can not be refused to it."

All the authorities I have at my command define expulsion only to aliens; still it is interesting even to see what laws and customs rule expulsion of alien citizens.

"In 1888 Rolin-Jacquemyns, the secretary-general of the Institute of International Law, made a report to that body on the 'Right of expulsion of foreigners,' which is published in the *Revue de Droit International* (Vol. XX, p. 498, and following). The report was in answer to a call by the association for an examination of the question 'In what manner and within what limits governments may exercise the right of expulsion of foreigners?' This jurist says:

"The first condition of the existence of a state is not only the existence of a group of citizens who recognize its sovereignty, but also the existence of a territory on which this sovereignty is exercised, as a matter of fact and of right, to the exclusion of any other sovereign authority."

"Upon this principle of territorial sovereignty he formulates the fundamental rule that—

"Every state may limit the admission and the residence of foreigners upon its territory by such conditions as it deems necessary. But (he adds) there is another consideration which tends, not to annul, but to restrain this exercise of territorial sovereignty. The individual expelled has the double quality of being a man and a citizen of another state. As a human being, he has the right to be exempt from needless harsh treatment and from unjust detriment to his interests; in his quality of citizen of another state, he has a right to invoke the protection of his country against unduly rigorous treatment and against spoliation of his property. The act of expulsion ought to conform to its direct, essential object, which is to relieve the soil of an obnoxious guest. The right of national sovereignty does not require nor permit more. Generally an official order to leave the country within a specified time is sufficient. If not, force may be employed. But forcible eviction should never assume a gratuitously vexatious character."

"In closing his report, Mr. Rolin-Jacquemyns offers the following as one of five 'conclusions':

"Even in the absence of treaty, the state to which the expelled person belongs has a right to know the reason for the expulsion, and the communication of the reason can not be refused. Moreover, the expulsion should be accomplished with special regard for humanity and respect for acquired rights. Except in cases of special urgency, a reasonable time should be allowed to the expelled person to adjust his affairs to the new conditions. Lastly, except in cases of extradition, the expelled person ought to be allowed to depart by the route which he prefers."

"At a later meeting of the Institute of International Law (1891), in which a set of rules was formulated for the regulation of expulsion, Professor Bar said, in criticising one of the proposed rules which provided for diplomatic reclamation in favor of the expelled foreigner:

"I do not doubt that the government of the expelled person may sometimes demand an indemnity in his behalf; but this is only an application of the general and unquestioned principle of the law of nations which prohibits the unjust treatment of foreigners, a principle that needs not the sanction of an express regulation." (Inst. Dr. Int. Annuaire, Vol. XI, p. 310).



"Calvo (Dictionnaire de Droit International, title Expulsion) says:

"But when a government expels a foreigner without cause, and in a harsh, inconsiderate manner (avec des formes blessantes), the state of which the foreigner is a citizen has the right to base a claim upon this violation of international law and to demand adequate satisfaction.'

"In certain countries, of which Belgium is an example, the law relating to expulsion provides safeguards against abuse and injurious consequences, by requiring previous notice, by conceding the right of choice of the way out of the country, etc. In others, as in France, the law permits immediate expulsion, but the administration of it is tempered by executive regulation. In an executive order of December 17, 1885, the French minister of the interior deprecated and forbade harsh execution of the law by subordinate functionaries. 'Whatever may be the necessities,' he said, 'which in the interest of public order are imposed on the superior authorities, I believe that the Government of the Republic should be actuated in matters of this nature only by considerations of impartial humanity consistent with the wholesome enforcement of the law.' Referring to certain instances of harsh execution of the law by the police authorities near the frontiers, he says:

"This is, in my opinion, a misconception of the sentiment of humanity to which I alluded above, and an application of the letter of the law with a rigor which a free republican government like France cannot afford to exercise toward foreigners of any nationality." (Journal de Dr. Int. Privé, vol. 13, 16, and 497). (Moore, Int. Law Digest, Vol. IV, p. 103-105).

#### THE FIRST CASES UNDER MARTIAL LAW

The first cases which had been tried under martial law by the army of occupation in the coal area occupied by France and Belgium and sentences pronounced, are the following cases: Thyssen, Dr. Schlutius and Geheimrat Raiffeisen.

I have before me a report of the Attorney of Defense, Dr. Friedrich Grimm, LL.D., Barrister at Law, and Professor of International and Civil Law at the University of Munster. The charge against the three defendants reads as follows:

"The defendants are accused of having on January 18th, 1923, refused, at Bredene (in the occupied German Territory), to obey an order which had been lawfully given by the Commanding General of the 128th Infantry Division, charging them to continue the delivery of any coal which was necessary for the effective working of the public services under the usual conditions, an order applying to Public order and welfare, and thus of having violated the interests making necessary the occupation and which are imposed on the defendants and punishable according to Art. 63 and 267 of the Military Criminal Code, 42 and 43 of the Hague Convention of Oct. 18th, 1907, 2 and 9 of the Ordinance of the Commanding General of the Occupation Forces of January 11th, 1923, and 40 of the Criminal Code."

The crime herein described may be in short words designated as a refusal to obey a military order. Section III of the Hague Convention of 1907, Military Authority over the Territory of the Hostile State, reads as follows:

"Article XLII.—Territory is considered occupied when it is actually placed under the authority of the hostile army.

"The occupation extends only to the territory where such authority has been established and can be exercised.

"Article XLIII.—The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power

to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

"Article XLIV.—A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence.

"Article XLV.—It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

"Article XLVI.—Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

"Private property cannot be confiscated.

"Article XLVII.—Pillage is formally forbidden.

"Article XLVIII.—If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

"Article XLIX.—If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

"Article L.—No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

"Article LI.—No contribution shall be collected except under a written order, and on the responsibility of a Commander-in-chief.

"The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

"For every contribution a receipt shall be given to the contributors.

"Article LII.—Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

"Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

"Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

"Article LIII.—An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

"All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.

"Article LIV.—Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

"Article LV.—The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

"Article LVI.—The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

"All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."

As France does apply the Hague Convention, and as the Hague Convention provides for the laws, rights and duties of war, France used war measures. France entered the Ruhr to carry out a purely economic occupation in time of peace. France denies the military occupation to Germany, to her own Allies and to the entire world; and consequently the action of France must be restricted to the purely economic question and cannot justify herself to act in warlike manner and according to the rules laid down in the Hague Convention which is based on war acts.

Article 44 of the first Hague Convention of 1899 reads: "It is prohibited to force the inhabitants of an occupied territory to take part in warlike undertakings against their own country."

And Article 52 reads: "Such services must not involve the obligation of the inhabitants to participate in warlike undertakings against their fatherland."

Consequently we must accept Dr. Grimm's defense:

"The position taken up here by the court is absolutely untenable. Apart from the fact that General Degoutte's Ordinance is legally invalid in any case, his ordinance can never invalidate existing principles of International Law. One must approve of the action of the prosecutor in the Thyssen case who placed himself firmly on the ground of the Hague Convention and recognized it as being binding for France. The first Hague Agreement of 1899 was signed by France and Belgium, the case for the prosecution being based on the agreement itself.

"Said Agreement in Art. 44 provides:

"'It is prohibited to force the inhabitants of an occupied territory to take part in warlike undertakings against their own country.'

"And with regard to personal services Art. 52 provides:

"'Such service must not involve the obligation of the inhabitants to participate in warlike undertakings against their fatherland.'

"Should the Hague Convention at all be applied (and France does so) in order to justify the measures adopted, they would have to be applied by way of analogy and one could not raise the objection that in this case there is no question of war measures. The rights of the occupant, carrying out a purely economic occupation in peace time, the military character of which is expressly denied by France, must be more restricted than those which the occupant can arrogate to himself during war. The concession made during war to the inhabitants, of

protection of their most sacred rights and of their property, must also be regarded as being a minimum guarantee for the rights of the Ruhr population. But also the French courts have the obligation of respecting their own Common Law, and it is just in French criminal procedure that the official acting at the instigation of his superiors enjoys special protection. This has been expressed in places of the Criminal Law repeatedly, among other places in Art. 114 in which Sect. 2 runs as follows:

"If the official inculpated proves that he acted under the orders of his superiors whom he was bound to obey in the matter in question, he shall be acquitted."

"The differential treatment of officials and civilians by the French military authorities is thus incomprehensible.

"Just the reverse might still have some sense. For, if the ordinary citizen owes obedience to his country and her laws, all the more the official who has sworn the oath of allegiance to his state and who is acting in a very strong condition of constraint of varying character. First of all, he is subject to the general moral constraint of all citizens, who are forbidden by honour and conscience to act against their country. Furthermore, under the special constraint of a man who has officially sworn an oath of allegiance and refuses to commit perjury. To this must be added that the official runs the risk in case of acting contrary to the orders of the Reichskohlenkommissar not only of being liable to be punished with imprisonment, but also of being subjected to disciplinary proceedings and of losing his office. Finally, there is also the question of his civil responsibility which in case of his acting contrary to his official duties makes him liable to damages.

"In a dignified and inspiring manner Geheimrat Raiffeisen in his final address to the Court Martial clothed this clear legal position in the following vigorous expression: 'The same discipline that I demand from my subordinates, I also demand from myself as towards my superiors. I have sworn an oath of allegiance to my State, and I can and will not commit perjury.'"

## REQUISITIONS

When France invaded a territory where external and internal peace was established, where amicable and mutual good will existed among the inhabitants, where there was no sign of commotion or disturbance, where harmony and obedience of law existed among the inhabitants, where security and good order prevailed,—she invaded that land in contravention to Article 18, "to take measures which shall include economical and financial measures (but not war measures) and which Germany agrees not to regard as acts of war for the simple reason that economic measures should be taken and not war measures."

But now France is adopting Chapter 12 of the conventional law of war, the Hague Reglement of Articles 49 to 56, which call for requisitions, contributions, fines, and the treatment of property.

"Article LII.—Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

"Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

"Contributions in kind shall as far as possible be paid for in cash; if not a receipt shall be given, and the payment of the amount due shall be made as soon as possible."

Contributions and requisitions naturally rest on the necessity of war. The last Hague Conference provided that in making requisitions the belligerent is held responsible for payment, and as Spaight said, "It has struck a blow at the right of requisitioning—the extreme right recognized by the jurists—which may change its whole nature, and complete a process which had already begun, of replacing requisitioning by the system of amicable purchase or at least by a right of preemption. Contributions, too, have become a rock of offence to many great authorities; jurists have raised their voices against this war right on the score of its injustice; the official manual of Germany, the nation which has always claimed the most elastic prerogatives in the matter of levying contributions, has had to fall into line with modern opinion in declaring illegal certain forms of contributions which till yesterday were regarded—in Germany at least—as being almost as firmly established and respectable as marriage or monometallism. The process is still far from complete. As war law stands today, contributions and requisitions remain as approved methods by which an invader can procure from the enemy's citizens such funds, goods, or services as his army needs—subject, in the case of requisitions, to his paying therefor either at the time or subsequently. (Spaight, *War Rights on Land*, page 384).

According to Article 53 of the second Hague Convention, the army of occupation can confiscate or take possession only of the cash funds and other realizable securities which are strictly the property of the state; depots of arms, means of transport, stores and supplies and all movable property belonging to the state which may be used for military operations. Furthermore, all appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals. But immovables, like institutions devoted to religion, charity, education, arts and sciences, are neither confiscable nor sequestrable; the property of the cities, like town halls, waterworks, gasworks, police stations, are neither sequestrable nor confiscable (Holland, *Laws and Customs of War*, p. 40). Churches, temples, mosques, synagogues, etc., without any distinction as to the nature of the religious cult, are not subject to confiscation. Fuel recovered in mining, coal and all its by-products, being the private property of the various private mining concerns, is neither confiscable nor sequestrable according to Article 46 of the Hague Convention. If the French Government is sequestering coal this is not a requisition because it is not used for the army but it is an offense against private property, violently taking in possession goods and material which belong to individuals, in contravention to Article 46 of the Hague Convention, using force and arms to take possession of private property. The act is illegal. The only term for this illegal act is "pillage," the forcible taking of private property by an invading army from the enemy subject (*American Ins. Co. v. Bryan*, 26 Wend. (N. Y.) 573, 37 Am. Decision 278).

The inviolability of private property as I mentioned above is the Magna Charta of the war law and is recognized as the fundamental principle of international law which has been acknowledged by the two Hague Conventions and by all the nations of the world.

Article 53 of the Hague Convention, enumerating the treatment of property in the occupied territories and the articles which are subject to confiscation, is fully defined but this Article 53 shows the necessities of war. But Germany is not in a state of war, there is no army resistance. Consequently there does not exist a military neces-

sity and no war measures can come into question. No requisition can be made as the needs of the occupied army are provided for by France. There is no state of war between France and Germany; all requisitions forcibly taken from the German territory are in contravention to the Hague Convention for war on land.

In time of peace requisition is an act of sovereignty, and in the words of Justice Story, speaking for the whole Supreme Court of the United States: "The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction. And however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted, in construction, to places and persons upon whom the legislature have authority and jurisdiction." (The Apollon, 9 Wheat. 362, 370).

### INCITING THE PEOPLE OF THE OCCUPIED TERRITORY

The conventional war law does not contain any prohibition against instigation, the act by which a nation is incited to do a hostile act.

Professor Despagnet states that "appeals to treason, defection, or desertion, especially under promise of recompense or preferential treatment, addressed by one belligerent to either the troops or the population of the hostile country, are generally considered reprehensible." (Despagnet, *La Guerre sud-africaine au point de vue de Droit international*, page 114).

Professor Pillet allows incitement of the adversary's forces to treason, but condemns the same action when the civil population is concerned. "Incitement to revolt," he says, "is an attempt upon the very life of the hostile State, and this attempt, not being justified by necessity, becomes an infraction of the law of nations." (Pillet, *Les lois actuelles de la Guerre*, pages 97-8).

If a commander of an army expects that the population of a country occupied by him shall refrain from any unlawful act, he ought not to try to make derogatory remarks about their character, censuring the very manhood, the pride, of an entire nation.

It is regrettable that General Degoutte, commanding the army of invasion, uttered such words which are derogatory to the character of the German nation in the estimation of the world. May I call General Degoutte's attention to the etiquette and honor of the international law? I desire to call his attention to Blackstone, who says "honor is 'a point of a nature so nice and delicate that its wrongs and injuries escape the notice of the common law, and yet are fit to be redressed somewhere.'" (3 Bl. Com. 104).

May I not submit to him the work of Hugo Grotius, the founder of the science of international law, and who deserves the title "Father of International Law." His work, *De jure belli ac pacis*, published in 1625 during the Thirty Years' War made such a great impression on the chivalrous King Gustavus Adolphus that he is said to have slept with it under his pillow during his campaigns in Germany. Grotius said:

"Honor is an opinion of one's own excellence; and he who bears such an injury shows himself excellently patient, and so increases his honor rather than diminishes. Nor does it make any difference if some corrupt judgment turn this virtue into a disgrace by artificial names; for those perverse judgments neither

change the fact nor its value. And not only the ancient Christians said this, but also the philosophers, who said it was the part of a little mind not to be able to bear contumely." (Grotius de Jure Belli et Pacis, li. 1, 10).

Interviewed by the Associated Press on February 11, 1923, General Degoutte, the French Commander, made the following remarks:

"Just one month ago I gave orders to my troops to enter the Ruhr, and never, until Germany makes adequate settlement for the frightful wrongs and damages inflicted upon my country, will I order them to withdraw.

"Right and might are ours, and we shall win. We occupied the Ruhr without shedding a drop of blood. **We are getting ahead in organizing the region.** The Germans may sneer, but we can stand an idle Ruhr longer than they can.

"Chancellor Cuno declares our aim is the economic destruction of Germany. Our aim is much simpler. We want redress; we want Germany to honor her signature. The economic ruin of Germany would prevent her from paying us. Germany, by fomenting strikes, is responsible for the present situation of achieving her own ruin."

The chancellor's reference to Germany being too weak to resort to physical resistance brought forth this rejoinder from the French commander:

"Germany will never fight unless she is stronger, or believes she is stronger, than her adversary. The moment she feels an opponent is more powerful she surrenders. She pleaded and begged for an armistice under circumstances in which the allies would have considered they had just begun to fight. We did not quit after Sedan. We fought to the finish; we lost, and we paid.

"Germany is branded as a quitter before the entire world; insolent, arrogant, pitiless in victory, but servile, self-pitying in defeat. How do they like quitters in America?"

To this interview with General Degoutte, Herr Gessler, Minister of Defense of Germany, replied as follows:

"We want no pity, as Gen. Degoutte seems to believe. We demand our rights. The iron fist of the French army leader on the Ruhr can violate justice for a time, but justice and truth are stronger than physical power.

"Because through American help France was able to defeat Germany in the world war, French militarism now feels strong enough for a warlike campaign against a disarmed people. I must leave you to judge whether such a campaign, conducted years after the conclusion of peace, is just. It is difficult to make the German and French points of view harmonize in this respect.

"Gen. Degoutte boasts that his troops occupied the Ruhr areas without a drop of blood having flowed. This boasted condition was not due to his soldiers, but to the self-discipline of the German population in the Ruhr, who submitted to all brutalities of the occupying troops, clenching their teeth, indeed, but without permitting themselves to be drawn into a counter battle.

"In the meantime, unfortunately, much German blood has flowed, because the French government assigned its troops to a task for which the discipline of the individual soldier has not sufficed. If Gen. Degoutte says he has allowed the German populace full liberty, then we have a different idea of liberty.

"The banishment of all unyielding inhabitants, the suppression of every free expression of opinion, the prohibition of more than 100 newspapers, the imprisonment of thousands of persons, the maltreatment of women and girls with riding whips, do not pass for signs of liberty, either in Germany or the rest of the civilized world.

"Gen. Degoutte calls us Germans 'quitters,' and says that the German is the first to beg for mercy when he finds himself opposed by a stronger individual. It surprises me that he makes this contention so shortly after the results of the last great war, and even then to an American. The French army leader certainly cannot have forgotten that Germany fought for four years against overwhelming odds, that her troops defeated the Russians, the French, and the English.

"In the summer of 1918 France was saved only by the fact that an American division revived the fighting and at the last moment prevented the taking of Paris. We know from Mr. Walter H. Page's book (American ambassador at London) that in 1917 France intended to withdraw and conclude a separate peace.

"Germany accepted the armistice in 1918 after the powerful American army had turned the balance against her.

"In Germany the government which took over the leadership in November, 1918, hoped, first of all, that the 'fellowship' of nations would be restored.

"Now we know that France engaged in sabotage systematically from the beginning, relative to all these plans for the reconciliation of nations, and no German today still hankers to be a comrade of Gen. Degoutte."

What are the results of General Degoutte's degrading remarks? Let us take the report of a single day from the Ruhr District (March 12, 1923):

"Eight Germans are dead as the result of clashes with French troops in various parts of the Recklinghausen district last night.

"One French soldier and three Germans were wounded in a riot at Dortmund.

"A state of siege has been declared in the entire Recklinghausen region in consequence of these disturbances.

"Additional troops have been sent to preserve order at Buer, where a French army officer and a French civilian official were killed Saturday night and where excitement has since been running high, resulting in renewed shootings.

"Of the Germans who met death, two were shot down while trying to escape from the gendarmes in the Buer disturbances. Five others were killed and several wounded an hour later when a crowd attacked a French guard post. The eighth German was killed at Dortmund when a crowd attacked a French detachment.

"Disturbances were renewed at Buer last night, when French gendarmes went to the home of a German suspected of being implicated in the assassination of the French officials. Two Germans who were found there were arrested. They were being taken to a guard post when, according to the French reports, they tried to escape and were shot."

Similar instances I could quote by pages, but these are the reports for a single day; namely, that of March 12, 1923, when I was dictating these few lines.

## POLITICAL INTERVENTION

Intervention between two or more states by force is a hostile act, is an act of war.

"Intervention," says Hall, "takes place when a state interferes in the relations of two other states without the consent of both or either of them, or when it interferes in the domestic affairs of another state irrespectively of the will of the latter for the purpose of either maintaining or altering the actual condition of things within it. Prima facie intervention is a hostile act, because it constitutes an attack upon the independence of the state subjected to it. Nevertheless its position in law is somewhat equivocal. Regarded from the point of view of



the state intruded upon it must always remain an act which, if not consented to, is an act of war. But from the point of view of the intervening power it is not a means of obtaining redress for a wrong done, but a measure of prevention or of police, undertaken sometimes for the express purpose of avoiding war. . . . Hence although intervention often ends in war, and is sometimes really war from the commencement, it may be conveniently considered abstractedly from the pacific or belligerent character which it assumes in different cases."

(Hall, Int. Law, 5th ed. 284. See Bluntschli, trans. by Lardy, ed. 1881, Sections 68-69, 431-441, 474-480; Bonfils-Fauchille, Manuel, ed. 1901, Sections 295-323; Creasy, First Platform, 278-296; Heffter, Bergson's ed. 1883, Sections 108-111; Phillimore, 3d ed., I, 553-638; Wheaton, Dana's ed., Sections 125-133).

## SOVEREIGNTY OF THE STATE

The plainest and best expression has been given by Bodin, *De republica*, lib. 1, cap. 8, Grotius (lib. 1, cap. III, par. 7) who defined sovereignty as "the power whose acts are not subject to the control of another, so that they may be made void by the act of any other human will."

Wheaton in his *Elements*, Chap. II, paragraphs 20, 21, Dana's ed. 31-33, gives the following definition of sovereignty:

"Sovereignty is the supreme power by which any state is governed. This supreme power may be exercised either internally or externally. Internal sovereignty is that which is inherent in the people in any state, or vested in its ruler by its municipal constitution or fundamental laws. External sovereignty consists in the independence of one political society, in respect to all other political societies. The internal sovereignty of a state does not, in any degree, depend upon its recognition by other states."

The invasion of the Ruhr Basin by France is an infringement upon the right of a sovereign independent nation. It is a contravention of the Versailles Peace Treaty; it cloaks itself in aggression, violence, which even by implication the Versailles Treaty does not justify and sanction. The occupation of the Ruhr is not only a breach of the Peace Treaty but also a breach against a defenseless nation. The French occupation of the Ruhr Basin is a political move to dismember Germany, to annex the Rhineland, and to establish French military power over Europe. The reparation question is only an excuse for the dismemberment of Germany.

France entered the Ruhr on the 10th day of January, 1923. By the military invasion of the Ruhr France paralyzed the German industries, striking a blow against the economic prosperity of the United States and England. The occupation of the Ruhr is looked upon as a possible advance on Berlin.

On the same day that France entered the Ruhr, Mr. Ebert, President of the German Empire, issued the following official proclamation to the inhabitants of the Ruhr Valley, requesting them to remain calm "despite the continuation of French injustice and force, which constitutes a breach of the Versailles Treaty, committed against a disarmed and defenseless nation. The policy of force which has violated treaties and trampled the rights of humanity now threatens the key district of the German economic world. The execution of the peace treaty thus becomes an absolute impossibility, and at the same time the living conditions of the suffering German nation are disorganized.

"Germany was ready to fulfil all obligations within her power. She has now been attacked without being given a hearing. We lay this act of force before the forum of Europe and the entire world."

William Cuno, the Chancellor of Germany, denies that the Treaty permits the seizure of the Ruhr. Germany regards the seizure of the Ruhr Valley as a breach of the Versailles Peace Treaty and as "the use of might against a defenseless people." Chancellor Cuno states:

"France is trying to cloak her contemplated action with the appearance of justice, in that she spreads sanctions and pledges which are supposed to have basis in the stipulations of the Versailles Treaty. Yet, even as monstrous as this instrument is, it does not go so far as to permit the allies optional impingement upon German sovereignty or wilful encroachment on German territory.

"As a pledge to their demands under the Treaty, or as security for reparations, the allies are occupying the Rhineland for a specific period, thus holding a guarantee which is more secure and more crushing in its final working out than any yet incorporated in any peace treaty between civilized peoples. If France on her own responsibility fails to recognize the limitations established in the agreement governing the rights of occupation, or if she actually proceeds to impinge upon Rhineland territory outside the established zone of occupation, then such procedure ceases to be a mere exercise of her treaty privileges and becomes a violent breach of the peace against a defenseless people.

"We have given tangible proof of our readiness voluntarily to fulfil to the extent of our ability the demands upon us. If need be the German people will show equal firmness in further following the path of its affliction.

"There can be no negotiations in an atmosphere of pressure and threats. We cannot oppose violence with violence. We are determined, however—and in this we have the concurrence of the German people—to expose in its true light before the world at large the economic folly and complete illegality of the French intentions."

Senator Borah on January 22, 1923, said:

"The action of France is, in my judgment, without authority under the Versailles Treaty. It is a defiance of international order and peace. It is an offense against humanity; what she is doing will not bring compensation but it will bring supreme suffering, not only to the Germans but to the people throughout Europe, and incalculable loss to our own people."

In the British Parliament on March 13, 1923, the Ruhr question was raised by Sir John Simon, leader of the Asquith branch of the Liberals.

"Sir John argued that the French were guilty of a breach of the Versailles Treaty, and the house was entitled to know the attitude of the government on this point. It was evident, he said, that France was not out for reparations, but for something else and therefore Great Britain was entitled to a clear statement of what that something else was.

"Sir John urged the British Government, despite the opposition of France, to have the matter referred to the league of nations."

E. D. Morel, a Laborite, said "that France had annexed the territory in everything but name and the fact that Great Britain allowed this illustrated the bankruptcy of European statesmanship and the moral decay that was coming over the minds of men. The policy, if pursued, was bound to end in war and all nations would be dragged in again."

Former Prime Minister Asquith declared "there seemed to be no reason present why the French should not go as far as Munich or even Berlin. He

asserted that the situation required intervention, and nobody was better equipped for that purpose than the league of nations."

Ronald MacNeill, under foreign secretary, said "the government realized the seriousness of the situation and was trying in every way possible to prevent a rupture with France."

The further invasion and occupation of Mannheim, Darmstadt, etc., is only an extension of France's action in the Ruhr, of which even the representatives of the British Government and the members of the House of Commons declared that this action of France is devoid of justification in the Treaty.

The first law established by the French invading army was the martial law.

### MARTIAL LAW

"A system of law, obtaining only in time of actual war and growing out of the exigencies thereof, arbitrary in its character, and depending only on the will of the commander of an army, which is established and administered in a place or district of hostile territory held in belligerent possession, or, sometimes, in places occupied or pervaded by insurgents or mobs, and which suspends all existing civil laws, as well as the civil authority and the ordinary administration of justice." See *in re Ezeta* (D. C.) 62 Fed. 972; *Diekelman*, v. U. S., 11 Ct. Cl. 439; *Com. v. Shortall*, 206 Pa. 165, 55 Atl. 952, 65 L. R. A. 193, 98 Am. St. Rep. 759; *Griffin v. Wilcox*, 21 Ind. 377. See, also, *Military Law*.

"Martial law is neither more nor less than the will of the general who commands the army. It overrides and suppresses all existing civil laws, civil officers, and civil authorities, by the arbitrary exercise of military power; and every citizen or subject—in other words, the entire population of the country, within the confines of its power—is subjected to the mere will or caprice of the commander. He holds the lives, liberty and property of all in the palm of his hand. Martial law is regulated by no known or established system or code of laws, as it is over and above all of them. The commander is the legislator, judge and executioner." *In re Egan*, 5 Blatchf. 321, Fed. Cas. No. 4,303. (*Blacks Law Dictionary*, 763, 4).

"Martial law is the law of necessity, the ordinary law, and the law of nature intermingled in such manner and proportions as the military power deems to be required by the particular emergency, when it supersedes or otherwise takes a control superior to the civil power. Some even deny that it is law,—regarding it as a mere despotism, and its abode the breast of the military commander. One writer, after expressing this idea, proceeds: 'Despotic in its character, and tyrannical in its application, it is only suited to those moments of extreme peril when the safety and even existence of a nation depend on the prompt adoption and unhesitating execution of measures of the most energetic character. . . . The Constitution of the United States has wisely, and indeed necessarily, permitted the proclamation of martial law in certain specified cases of public danger, when no other alternative is left to preserve the State from foreign invasion or domestic insurrection.' (*O'Brien Courts-Martial* 26). Now, we have seen that no community can exist without law. (*Ante*, Sec. 5 et seq.) And there is no more occasion for a military officer to rule by his uncontrolled whim than for a judge. Truly viewed, martial law can only change the administration of the laws, give them a rapid force, and make their penalties certain and effectual, not abrogate what was the justice of the community before. The civil courts are in part (*Dow v. Johnson*, 100, U. S. 158) or fully suspended; but in reason, the new summary tribunals should govern themselves in their proceedings, as far as circumstances admit, by established principles of justice, the same which had before been recognized in the courts." (And see *Luther v. Borden*, 7 How. U. S. 1; *C. v. Blodgett*, 12 Met. 56; *Drehman v. Stifel*, 41 Mo. 184, 97 Am. D. 268; *C. v. Fox*, 7 Pa. 336; *P. v. McLeod*, 1 Hill, N. Y. 377, 415, 435, 37 Am. D. 328; 3 *Greenl. Ev. Sec.* 469).

"Thus, in France, we have (1) from the point of view of the defence of the country, the state of peace (*l'état de paix*), the state of war (*l'état de guerre*), and the state of siege (*l'état de siège*), in fortified places and military posts; (2) from the point of view of the maintenance of order and of the public peace, the state of siege (*l'état de siège*) in parts of the territory where that exceptional measure may become necessary. The state of siege may be established by a decree or by matters of fact, such as a forcible attack, a surprise, or domestic sedition." (Block, *Dictionnaire de l'Administration Française*, 4th ed. 1109-1111).

As there was no disorder; as there was no military force placed against the invaders; as there was no fighting or disorder in sight; as neither life nor property was in danger; there was no need of proclamation of martial law, there was no justification for the proclamation of martial law. And it was not a question of restoration of peace, as peace was firmly established in the entire Ruhr District.

"Martial law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not martial law; it is the abuse of the power which that law confers. As martial law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity—virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed. (G. O. 100, Art. 4).

"'As to the remark which had been made about him (the Duke of Wellington), he would say a word in explanation. He contended that martial law was neither more nor less than the will of the general who commands the army. In fact, martial law meant no law at all. Therefore the general who declared martial law, and commanded that it should be carried into execution, was bound to lay down distinctly the rules and regulations and limits according to which his will was to be carried out. Now he had, in another country, carried on martial law; that was to say, he had governed a large proportion of the population of a country by his own will. But then, what did he do? He declared that the country should be governed according to its own national laws, and he carried into execution that will. He governed the country strictly by the laws of the country; and he governed it with such moderation, he must say, that political servants and judges who at first had fled or had been expelled, afterwards consented to act under his direction. The judges sat in the courts of law, conducting their judicial business and administering the law under his direction.' (Speech of the Duke of Wellington, Debate on Affairs in Ceylon, House of Lords, April 1, 1851, Hansard, 3d Series, CXV. 880)." (B. Singer's *International Law*, p. 170-71).

#### TERMINATION OF PEACE TREATY

Regarding treaties which may be considered void: As the Treaty of Versailles to all appearances places a nation in permanent servitude and deprives her of her right of sovereignty, the treaty is invalid.

"A treaty therefore becomes voidable as soon as it is dangerous to the life or incompatible with the independence of a state, provided that its injurious effects were not intended by the two contracting parties at the time of its conclusion." (Hall, *Int. Law*, 301).

Therefore a treaty, which was not intended to be a menace to the life or independence of a state at the time of its execution becomes voidable the moment subsequent events invest it with that character. (Taylor, *Int. Law*, p. 401).

Heffter says that a state may repudiate a treaty when it conflicts with "the rights and welfare of its people."

Hautefeuille declares that "a treaty containing the gratuitous cession or abandonment of an essential natural right, such for example as part of its independence, is not obligatory."

Bluntschli thinks that a state may hold treaties incompatible with its development to be null, and seems to regard the propriety of the denunciation of the treaties of 1856 by Russia as an open question.

The doctrine of M. Flore exhibits the extravagancies which are the logical consequences of these views. According to him "all treaties are to be looked upon as null, which are in any way opposed to the development of the free activity of a nation, or which hinder the exercise of its natural rights"; and by the light of this principle he finds that if "the numerous treaties concluded in Europe are examined they are seen to be immoral, iniquitous, and valueless." Such doctrines as these may be allowed to speak for themselves. Law is not intended to bring license and confusion, but restraint and order; and neither restraint nor order can be imposed by the principles of which the expression has just been quoted. Incapable in their vagueness of supplying a definite rule, fundamentally immoral by the scope which they give to unregulated action, scarcely an act of international bad faith could be so shameless as not to find shelter behind them. High-sounding generalities, by which anything may be sanctioned, are the favorite weapons of unscrupulousness and ambition; they cannot be kept from distorting the popular judgment, but they may at least be prevented from affecting the standard of law. (Heffter, No. 98; Hautefeuille, *Des Droits et Devoirs des Nations Neutres*, i. 9; Bluntschli, No. 415 and 456; *Nouv. Droit Int.* 1st part, chap. iv; Hall, pp. 302-303).

The violation of any one article of the treaty is a violation of the whole treaty; for all the articles are dependent on each other, and one is to be deemed a condition of the other. A violation of any single article abrogates the whole treaty, if the injured party so elects to consider it. This may, however, be prevented by an express stipulation, that if one article be broken, the others shall nevertheless continue in full force. If the treaty is violated by one of the contracting parties, either by proceedings incompatible with its general spirit, or by a specific breach of any one of its articles, it becomes not absolutely void, but voidable at the election of the injured party. If he prefers not to come to a rupture, the treaty remains valid and obligatory. He may waive or remit the infraction committed, or he may demand a just satisfaction. (Grotius, *de Jur. Bel. ac Pac. lib. ii. cap. 15*, No. 15; *lib. iii. cap. 19*, No. 14. Vattel, *lib. iv. ch. 4*, No. 47, 48, 54).

"Where a treaty is violated by one of the contracting parties, it rests alone with the injured party to pronounce it broken, the treaty being, in such case, not absolutely void, but voidable, at the election of the injured party, who may waive or remit the infraction committed, or may demand a just satisfaction, the treaty remaining obligatory if he chooses not to come to a rupture. 1 Kent's *Comm.* 174." (In *re Thomas*, 12 Blatch. 370, cited in *Terlinden v. Ames* (1902), 184, U. S. 270, 287).

"That a breach on one side (even of a single article, each being considered as a condition of every other article) discharges the other, is as little questionable; but with this reservation, that the other side is at liberty to take advantage or not of the breach, as dissolving the treaty." (Mr. Madison to Mr. Edmund Pendleton, Jan. 2, 1791, 1 *Madison's Works*, 523, 524).

The continued violation of a treaty provision by one of the contracting parties will justify the other in regarding the provision as temporarily suspended. (Mr.

Bayard, Sec. of State, to Mr. Fairchild, Sec. of Treasury, Feb. 6, 1888, For. Rel. 1888, I, 124-125).

In conclusion I must refer to the letter of the late Dr. Bluntschli addressed to Count von Moltke, Field Marshal General, Christmas, 1880:

"Brutal and barbarous pillage was prohibited by generals before jurists were convinced of its illegality. . . . Men of nations readily disunited and opposed—Germans and French, English and Prussians, Spaniards and Dutchmen, Italians and Austrians—are, as a rule, all of one mind as to the principles of International Law. This is what makes it possible to proclaim an international law of war, approved by the legal conscience of all civilized peoples; and when a principle is thus generally accepted it exerts an authority over minds and manners which curbs sensual appetites and triumphs over barbarism. We are well aware of the imperfect means of causing its decrees to be respected and carried out which are at the disposal of the law of nations. . . . It is for this very reason that the jurist is impelled to present the legal principles, of the need for which he is convinced, in a clear and precise form, to the feeling of justice of the masses, and to the legal conscience of those who guide them. He is persuaded that his declaration will find a hearing in the conscience of those whom it principally concerns and a powerful echo in the public opinion of all countries. The duty of seeing that International Law is obeyed and of punishing violations of it belongs, in the first instance, to States each within the limits of its own supremacy. The administration of the law of war ought, therefore, to be intrusted primarily to the State which wields the public power in the place where an offence is committed. No State will lightly, and without unpleasantness and danger, expose itself to a just charge of having neglected its international duties; it will not do so even when it knows that it runs no risk of war on the part of neutral States. Every State, even the most powerful, will gain sensibly in honour with God and man if it is found to be faithful and sincere in respect and obedience to the law of nations." . . .

BERTHOLD SINGER, LL.D.

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